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5/31/01

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Historic Tours of America, Inc.

Serial No. 75/978,525

Susan M. Mulholland of Lucash, Gesmer & Updegrave.

Hannah Fisher, Trademark Examining Attorney, Law Office 107
(Thomas Lamone, Managing Attorney).

Before Hanak, Holtzman and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Historic Tours of America, Inc. (applicant) seeks to register the mark depicted below for "printed materials, namely calendars, gift cards, greeting cards, cartoon prints, cartoon strips, comic books, comic strips, coloring books, picture books, children's books, coasters made of paper, souvenir programs regarding shops, historical displays and trolley, aquarium or museum tours, stickers, and bumper stickers, all sold exclusively at museums, aquariums, and tourist facilities owned and operated by applicant and/or its affiliated companies." The intent-to-use application was filed on February 25, 1998.

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The Examining Attorney has refused registration pursuant to Section 2(d) of the Trademark Act on the basis that applicant's mark, when applied to applicant's goods, will be likely to cause confusion with the mark SEEMORE, previously registered in typed drawing form for "games and playthings, namely, stuffed toys, toy figurines, Christmas tree ornaments, board games, jump ropes, balloons, and yo-yos." Registration No. 2,097,778.

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When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Marks are compared in terms of visual appearance, pronunciation and meaning or connotation.

In terms of visual appearance, applicant's mark, with its massive smiling trolley, bears minimal resemblance to the registered mark SEEMORE per se. While the word SEEMORE is visible on applicant's trolley, it is the trolley which is the dominant portion of applicant's mark. Indeed, a consumer quickly glancing at applicant's mark may not even notice the words SEEMORE.

In terms of pronunciation, to the extent that applicant's mark is vocalized, then the two marks would be identical.

In terms of connotation, we find that the two marks are different. When the word SEEMORE appears on the side of a

large trolley, the connotation is that passengers on the trolley will see more attractions. In her first office action, the Examining Attorney stated that the mark SEEMORE per se is the phonetic equivalent of the name Seymour. We find that a number of consumers, upon seeing the mark SEEMORE per se, will think of the given name Seymour. This is particularly true when one takes into account the goods on which the cited mark SEEMORE is used, namely, stuffed toys and the like. None of the goods of the registrant are in any way related to optical devices or other devices that would permit one to see more. A more typical scenario is that consumers would view the registered mark SEEMORE as the given name of the stuffed toys and the like. As the Examining Attorney's own evidence demonstrates, it is common for goods such as registrant's to have trademarks which are given names.

In sum, we find that the only significant similarity between the two marks is in terms of pronunciation, assuming for the sake of argument that applicant's mark, consisting of a very large smiling trolley design, would be vocalized. In terms of visual appearance and connotation, the two marks are dissimilar.

Turning to a consideration of the goods, we note that while they are not identical, that with one important exception to be discussed in a moment, the goods are closely related. Many of applicant's goods and many of registrant's goods have particular appeal to children. We have little doubt that if very similar marks were used on stuffed toys (one of registrant's goods) and comic books (one of applicant's goods), confusion would result.

However, in this case there is one important restriction in applicant's identification of goods which causes us to find that there is no likelihood of confusion. All of applicant's goods are sold exclusively at museums, aquariums and tourist facilities owned and operated by applicant and/or its affiliated companies. There is no dispute that applicant's primary business is conducting trolley tours in various popular tourist cities. Applicant also owns and operates museums, aquariums and other tourist attractions which, as one might expect, applicant's trolleys stop at. In these museums, aquariums and other tourist facilities applicant, again as one might expect, has gift shops in which it sells the goods for which it seeks registration.

In our view, even if a consumer was familiar with registrant's SEEMORE per se line of goods, they would not confuse this line of goods with applicant's products which are sold exclusively at applicant's own museums, aquariums and tourist facilities. In other words, after having taken one of applicant's SEEMORE trolley tours, consumers, upon seeing the very massive smiling trolley on applicant's goods, would not associate these goods with registrant's goods which, we must assume, are sold through all normal trade channels.

At page 5 of her brief, the Examining attorney appears to argue that the trade channels could be the same in that registrant's SEEMORE per se goods could be sold in applicant's museums, aquariums and tourist facilities. This is a highly unlikely scenario. Applicant would have no interest in paying a higher price to purchase registrant's goods for sale in applicant's own museums, aquariums and tourist facilities. Likewise, if registrant were to sell its SEEMORE per se goods to applicant, registrant either would be the cause of the likelihood of confusion, or would be of the view that confusion would not exist. It must be remembered that the issue before us is the likelihood of

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confusion, not the mere theoretical possibility of confusion.

In sum, given the fact that the marks are only similar in terms of pronunciation (assuming that applicant's mark will be vocalized) and the fact that applicant has restricted the sale of its goods to its own museums, aquariums and tourist facilities, we find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.